FILE COPY

FILED
NOV 29 1946
CHARLES ELMORE CROPLEY
CLERK

No. 730

Supreme Court of the United States

OCTOBER TERM, 1946

L. W. REIGEL,

Petitioner,

v.

GEORGE M. HARRISON, individually and as Grand President of the Grand Lodge of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, an unincorporated organization, etc., et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MURRAY SEASONGOOD,
Attorney for Petitioner.

PAXTON & SEASONGOOD,
Of Counsel.

THE JOHNSON & HARDIN CO., LAW PRINTERS
CINCINNATI, OHIO

INDEX

	PAGE
Date of Judgment Below	1
Opinions Below	1
Statute Under Which Jurisdiction Is Invoked	2
Summary Statement	2
Questions Presented	7
Reasons Relied on for Allowance of the Writ	10
Brief	11
Conclusion	17

CASES CITED

Baltimore & Ohio Railroad Co. v. Stankard, 56 O. S. 224	11
Bowles, Admr. O.P.A. v. Beatrice Creamery Co., 146 F. (2d) 774	15
Burn v. Natl. Amal. Labor Union, etc., 2 Chancery 364	15
Erskine v. United States, 84 F. (2d) 880	15
Gallagher v. Monaghan, 58 N. Y. Supp. (2d) 618	16
Gonzalez v. Archbishop, 280 U. S. 1	14
Green v. Obergfell, 121 F. (2d) 46	14
Hill v. Texas, 316 U. S. 400	14
Myers v. Bethlehem Corp., 303 U. S. 41	14
Order of Railway Conductors of America v. Pitney, 326 U. S. 561	15
People ex rel. Deverell v. Musical Mutual Protective Union, 118 N. Y. 101, 23 N. E. 129	16
Peoples Bank & Savings Co. v. Katz et al., 146 O. S. 297	13
Radick et al. v. Underwriters at Lloyd's, London, 137 F. (2d) 21	15
Rodier v. Huddell, 232 App. Div. 531, 250 N. Y. S. 336	16

PAGE

Ruhlin v. New York Life Ins. Co., 304 U. S. 202 14
Societe Suisse Pour Valeurs De Metaux v. Cummings, Atty. Gen., 99 F. (2d) 387 15
State ex rel. Fritter v. Fraternal Mystic Circle et al., 9 O. C. C. 364 12
Tumey v. Ohio, 273 U. S. 510 ..... 12, 14
United States v. Latter-Day Saints et al., 101 F. (2d) 156 15
Wilcox v. Supreme Council, Royal Arcanum, 210 N. Y. 370, 104 N. E. 624, 52 L. R. A. (N.S.) 806 16

TEXTS

4 Am. Jur., Sec. 19, p. 467 16
Broom's Legal Maxims, Tenth Edition 12, 13
7 C. J. S., Sec. 34b, "Associations" 16
Oakes, Organized Labor and Industrial Conflicts, 1927. 16

No. ———

Supreme Court of the United States

OCTOBER TERM, 1946

L. W. REIGEL,

Petitioner,

v.

GEORGE M. HARRISON, individually and as Grand President of the Grand Lodge of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, an unincorporated organization, etc., et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner (referred to as Reigel) seeks to review the judgment entered September 23, 1946 (R. 188), denying petition for a rehearing of the decision and judgment of August 12, 1946 (R. 151, 152-164), in affirmance of a judgment (R. 106) of the District Court, Southern District of Ohio, dismissing Reigel's Amended and Supplemental Complaint (R. 89) against Respondents here, as defendants, for injunction, damages and all proper relief.

The opinion of the Court of Appeals (R. 152) is reported in 157 F. (2d) 140. The trial court opinion was oral (R. 103-104) and is not reported.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

A summary and short statement of the matter involved is: Reigel, a Vice Grand President of the Grand Lodge of the Brotherhood of Railway, etc., Employees (referred to as the Brotherhood or "the Organization"), in 1943 had for a third time been elected as such at a convention, for a term expiring June 30, 1947 (R. 16 bot.). The constitution of the Grand Lodge is included in the printed pamphlet, Plaintiff's Exhibit 1, transmitted, as were all exhibits, in original form, to the upper Court by order of the trial court (R. 107). (Additional copies of this exhibit are submitted for convenient reference.) Article 10, Section 1 (Plf.'s Exh. 1, p. 22) headed, "ELECTION—GRAND LODGE OFFICERS," reads:

> "Each shall serve until the election and installation of their successors, unless relieved of their offices by due process."

Reigel contended he was deprived of his office without the "due process" thus vouchsafed to a Grand Lodge officer.

In February and March, 1945, Harrison, as Grand President, took away from Reigel substantially all of his duties as a Vice Grand President (R. 18-19, 23-24).

In May, 1945, Reigel made accusations against Harrison before various general chairmen in meeting (R. 25 bot.). In the District Court, Reigel offered, but was not permitted, to show he had filed written charges against the Grand President and Grand Secretary-Treasurer in July, 1945 (R. 24), and these had not been acted on. There is no doubt he did file such charges (R. 25 bot.-26) and that Respondents and the Trustees refused to act as the constitution required they should (R. 38) on such charges.

On August 15, 1945, Harrison, purporting to act under Article 13, Section 11(a) of the constitution (Plf.'s Exh. 1, p. 28), suspended Reigel from membership (R. 159). Included in the grounds for suspension were (R. 76) that Reigel had made intemperate attacks upon and untrue accusations against the Grand President before the meeting above mentioned and that he had sought, by abuse of the Grand President, the Grand Secretary-Treasurer and the Trustees, and by threats of personal violence against the first two, to prevent investigations and exposures of his supposed misconduct (R. 159). The Grand President, the Grand Secretary-Treasurer and the Grand Executive Council treated Reigel's suspension from membership in the "Organization" as a forfeiture of his office as a Grand Lodge Vice President (R. 25, 37, 53). Between conventions, all executive and judicial power of the Grand Lodge (with immaterial exceptions) is vested in that Council [Plf.'s Exh. 1; Const. Art. 16, Sec. 2(a), p. 41].

As permitted by the constitution for a "member of the Organization," Reigel appealed from his suspension as such to the Grand Executive Council (Am. & Supp. Cplt., par. 10, R. 93; Plf.'s Exh. 1; Const. Art. 16, Sec. 6, p. 42). The sole ground of his appeal was (R. 31 top, 159 bot.) that before he could be separated from his office, the due process guaranteed to officers required procedure specified in the constitution, Article 19 (Plf.'s Exh. 1, p. 47), i. e., written charges (Sec. 1), a Board of Advocates (Sec. 2, p. 48), trial by them (Sec. 4, p. 49), their decision and, if guilty, punishment

> "either reprimand, suspension from office or expulsion from the Brotherhood" (Sec. 7, p. 50),

followed with the better appeal as in Sections 8 and 9 of Article 19 (pp. 50-51) to the convention from their decision, than in appeals from the Council (Art. 16, Sec. 15, p. 44; Art. 8, Sec. 3, p. 19).

The manner in which Reigel's appeal was heard by the Council was in violation of the constitution and grossly unfair, as shown in paragraphs 11 and 12 of the Amended and Supplemental Complaint (R. 93-96) and the proof [R. 57, Plf.'s Exh. 3 (transmitted), pp. 98, 112, 114, 115, 116, 142, 310, 328, 340-344, 347-8, 375-90, 390-98, 399, 400 bot.-405, 406], and was of itself a deprival of due process.

On October 13, 1945, the Council notified Reigel they had sustained the action of the Grand President. Reigel, on October 31 (R. 1), filed his complaint in the District Court and moved for restraining order or preliminary injunction with affidavit in support (R. 6-8). Some evidence was heard December 4, 1945 (R. 16). As objections were made to jurisdiction, Reigel, on December 27, 1945 (R. 15), moved to file a tendered amended and supplemental complaint

> "to conform the pleadings to the evidence, to indicate more clearly that the suit is a class action, to designate the personal and official defendants more accurately, to dismiss the defendant, Brotherhood . . . , an unincorporated organization, in order to avoid any question of want of jurisdiction and to plead matters which have occurred since the filing of the original suit."

On February 19, 1946, the Court allowed the filing, and dismissal of the Brotherhood as a defendant (R. 88). This pleading (par. 14, R. 96) avers that appeal to the next Grand Convention to be held in May, 1947, had to be filed within sixty days of October 13, 1945, and since no determination of the case or restoration to office before December 13 could have been obtained, Reigel had on December 4 filed such appeal without prejudice to his rights in the litigation and that

"said appeal was not necessary inasmuch as the proceedings to forfeit his office are illegal and void, and that said appeal will not, in any event, afford him an adequate remedy.

"Moreover, on an appeal from the Grand Council to a Convention, plaintiff having been suspended, would be denied the privileges of the floor and would have but a limited imperfect hearing at such Convention, not including the constitutional provisions for his benefit in a hearing at a Convention from an appeal from the Board of Advocates" (R. 96-97).

The Court, on February 19, 1946, decided against Reigel, thus (R. 104):

"I want prevailing counsel to prepare a finding of fact and conclusion of law, and the case will be dismissed on the one ground that Reigel, having chosen the Convention to settle the dispute, has relieved this Court of further responsibility. That's the finding. . . .

"Mr. Seasongood: I call the Court's attention to the fact that he didn't do that until we asked for a preliminary injunction and it was postponed at the instance of the defendants until he had to do that within a certain time, and he took his appeal without prejudice to his rights.

"The Court: That's very true. But while the case was pending here, he could have stood pat and put the issue squarely up to this Court. He didn't do that; he chose to take his chances on the Convention. The finding is, that it is binding on him and relieves this Court of further responsibility in determining the issues existing between the parties."

The Court made findings of fact and conclusions of law (R. 107, *et seq.*) not justified by the opinion or the evidence and entered, over Reigel's objection and exception (R. 122, 106), a general judgment of dismissal. Reigel's statement of points on which he intended to rely (R. 120) and his brief and argument (R. 187) include claim of error

in these respects. In the petition to the Court of Appeals for rehearing, under *Fourth* (R. 182), is shown the trial court based the finding the Convention could give Reigel full relief, solely on the constitution, a reading of which shows the opposite; since any relief will be postponed until the very end of his term and since by Article 8, Sec. 3, p. 19, Reigel's appeal will be heard by a Committee appointed by the President, subject to Convention approval, and the committee's report to the Convention will merely

> "set forth the salient points of the case and recommend the action to be taken" (*id.* p. 20 top).

Reigel contended that for the President to appoint a committee to determine, with practical finality, *inter alia* whether charges against and verbal attacks on himself justified punitive action by him, is a deprival of due process.

The appellate opinion (R. 156 bot., *et seq.*) adds, what it terms,

> "a bit more detail of the factual background disclosed by the record,"

and apparently assumes Reigel to have been guilty of misconduct. But when the trial court decided against Reigel on the sole ground of his appeal, as above stated, to the Convention pending the litigation, this occurred (R. 105):

> "Mr. Seasongood: I suppose, Your Honor, that the truth or falsity of the accusations against Reigel is not involved in this case. Will that be included in the finding?
>
> "The Court: That's right. The case simply turns on the selection by the plaintiff here of his own tribunal."

being the last of similar observations and rulings throughout the trial, e. g., R. 21, 26, 28 bot., 47 bot., 48 bot. Rei-

gel's position consistently was and is that when, under Article 19, there should be set up a Board of Advocates, Reigel would show that Board the falsity of the accusations (R. 161) and the malice that actuated them.

The appellate decision is that even if Harrison et al. declined to give Reigel the kind of tribunal, rights and remedies guaranteed him in the constitution as a Grand Lodge officer, he still had to exhaust remedies as a member of the Organization, no matter how futile, before coming to Court. Thus the decision says (R. 162):

> "Whether those who made the charges against him chose the appropriate course, we need not decide."

And (R. *id.*):

> "Reigel has not exhausted his remedies within the Brotherhood; and, this being true, he is not entitled to maintain this court action."

That part of the "factual background disclosed . . ." which shows the deceptive treatment by the Trustees of Reigel and their refusal, as well as that of the Council, to act on his charges against Harrison or even to give Reigel a transcript of the disallowance of his appeal to the Council from refusal to act on such charges, is not recounted by the Court.

The questions presented are:

1. May a Grand Lodge President, by use of power to suspend a member of the "Organization," forfeit the elective office of a Grand Lodge Vice Grand President?

2. Does the ordinary requirement of exhaustion of inter-association remedies before suit justify refusal of Court relief under circumstances including that plaintiff was denied by defendants remedies to which he was, under the constitution, entitled?

3. If so, should not refusal of injunction as premature have been the only penalty; not general dismissal and refusal of right to proceed in the same suit for damages against defendants as officers and personally for wrongful interference with plaintiff's enjoyment of his office?

4. Is there no exception to the rule of required exhaustion of inter-association remedies before suit?

5. Where complainant is entitled, before having his elective office forfeited, to "due process," by procedure expressly prescribed in the constitution, i. e., charges, opportunity to be heard by an impartial Board and right of appeal from its decision to a Convention under procedure that permits chance of success, and where he is refused such or any "due process," and where the procedures employed, besides violating fair play and due process, are also not conducted as prescribed for them in the constitution, even assuming them applicable—under such circumstances must an officer, before maintaining suit, exhaust the inter-association partial remedy, as a member, no matter how remote, incomplete, illusory, inferior and lacking in elements of due process?

6. Is it "due process" for an elective Grand Lodge President to forfeit about half the term of another Grand Lodge officer through suspension from membership, there being neither express nor implied power in the President to suspend an officer (power to suspend officers being expressly conferred upon an independent Board of Advocates) and where there is, in the constitution, no provision that suspension from membership in the "Organization" works forfeiture of Grand Lodge office?

7. May the jurisdiction of a Court to grant injunctive relief against forfeiture of balance of term of an officer be ousted by his agreement in an association constitution not to go to Court before exhaustion of inter-association

remedies, such remedies unexhausted being a limited and abortive appeal, in another capacity, to a Convention not to be held for years, until the very end of the term sought to be protected and too late for effective relief; so that a case then brought would have become moot, as to relief, to protect and save the term or possible additional term of the office?

8. Does one, deprived of elective office in the Grand Lodge of an unincorporated association through claimed forfeiture resulting from suspension from membership, without due process and in violation of the constitution and of procedure therein prescribed, who has brought suit to enjoin interference with enjoyment and property rights of his office and for damages against the officers as such and as individuals who deprived him of his office—does such one by taking a member's appeal, but only after applying for and failing to obtain injunction before expiration of prescribed time for appeal, to a Convention to be held more than a year thereafter, expressly without prejudice to his rights in the pending suit and asserting and showing that such forfeiture of his office was void and such appeal cannot afford adequate relief, lose the right further to prosecute his suit; and, if so, should same be dismissed *in toto*?

9. Is it "due process" for a Grand President to forfeit, through suspension from membership, the term of an elective officer for alleged causes which include claimed untrue and unwarranted attacks and charges against the President by the officer, the President then participating most actively, abusively and illegally in the hearing of the appeal from suspension before Vice Grand Presidents whom the President could discipline as he disciplined the officer proceeded against; and, in final appeal, the President appointing a Committee on Appeals to report to the Conven-

tion the "salient facts of the case" and recommendations; in other words, as to this last, is it "due process" that the President appoint a Committee to determine with substantial finality whether attacks on himself and his own proceedings were justifiable?

10. Is guilt or innocence a proper subject of inquiry when determining whether one has been deprived of due process?

11. Should the findings of a trial court be accepted if uncalled for by the opinion and if based on a constitution or written instruments contradicting the findings?

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

This Court, we know, does not grant the writ merely because there has apparently been a wrong decision, no matter how grievous to the litigant; but, there must be special and important reasons as well for allowing review. Such, we submit, exist here:

First. While neither a federal nor state agency has deprived Reigel of "due process," the procedures employed to forfeit his office are so oppressive and patently violative of the Brotherhood constitution and of reasonableness, fair play and "due process," the result reached should not be countenanced.

Second. The decision is of great importance to all Grand Lodge officers and to all members, comprising over 250,000, of the Brotherhood. It establishes a principle very injurious to them and to all similar unincorporated associations, including labor unions, fraternal and religious associations. It lends itself to autocratic and arbitrary domination. It takes away the security of elective governing officials; since what was done successfully, without complying with the constitution, to Reigel could be done

similarly to any other Grand Lodge officer incurring the President's displeasure.

Third. It should be established by this Court that right to resort to courts to protect the term of an elective office may not be destroyed by association constitutions requiring precedent exhaustion of inter-association remedies where such remedies are unlawfully withheld and denied; and where those afforded are, in a different capacity, illusory, violative of due process, of the constitutional requirements and necessarily so long deferred as to prevent effective court relief.

Fourth. The decision is probably untenable and either in conflict with state law as declared by the Ohio Supreme Court or probably in conflict with Ohio law as yet unannounced by the highest court of that state.

Fifth. The decision is in conflict with applicable decisions of this Court.

Sixth. The decision is in conflict with decisions of other courts of appeals and with general law on the same matter.

BRIEF

As to the Fourth reason relied on, no Ohio decided case is, like the present, one where (R. 177) the procedure was "'contrary to and in violation of the constitution and statutes of the order, or was 'unwarranted, illegal or arbitrary.'" Moreover, *Baltimore & Ohio Railroad Co.* v. *Stankard,* 56 O. S. 224, held invalid a regulation prohibiting a resort to the courts. The present case rules that no court action may be had to save what remains of a term of office until appeal to a Convention to be held just before the end of the term has been acted on, i. e., until the case has become moot by inability to enjoin interference with enjoyment of the office or to order reference to a Board of Advocates or reinstatement in time to permit

the officer to stand for another term; and this, though the right to an independent board to which he was entitled under the constitution and a fairer appeal from its decision to the Convention have been denied.

Nor did the Court consider that the appeal taken was wholly illusory and a violation of due process, for, among other reasons, the fact that the President who suspended, partly for attacks on himself, appoints, subject to Convention approval, the hearing Committee on Appeals. The law in *Tumey* v. *Ohio*, 273 U. S. 510, repeats the ancient maxim, "No man can be judge in his own cause," Broom's Legal Maxims, Tenth Edition, p. 68. In *State ex rel. Fritter* v. *Fraternal Mystic Circle et al.*, 9 O. C. C. 364, the Court applies the rule of strict construction against the power of expulsion and forfeiture (p. 374) and at p. 375 says:

> "To permit the officers themselves, whose conduct was assailed, to try and expel members on such charges, would, at least in the absence of clearest authority and full showing of right, violate the plainest principles of justice.
> "...
> "The law requires a fair trial, upon sufficient charges, after notice and full opportunity to defend, and before an impartial and unbiased tribunal."

(While this case was reversed in 61 O. S. 628 for failure to have pursued the proper remedy, the above statement of legal principles cannot be questioned.)

Nor did the Court think it important that the hearing before the Council was conducted in flagrant defiance of constitutional requirements as shown in paragraph 12 (a), (b), (c) and (d) of the amended and supplemental complaint (R. 94) and proved. The following is an example (Plf.'s Exh. 3, p. 378) of Harrison's unlawful participation in the hearing:

> " 'Now what the hell are you talking about—persecution. If I want to persecute you I could go after you and there wouldn't be any doubt about it when I did. . . .'
>
> "Now he says I threatened to frame him because I called his attention to his shortcomings and I say it's a damn lie fabricated in his persecuted mind for the purpose of escaping his own perfidity and neglect of his clear and reasonable obligations and duties to this Organization."

Harrison, in complete charge of the appeal hearing, after such abuse and putting in all kinds of evidence by himself and others against Reigel, says (Exh. 3, p. 402 top):

> "This Executive Council doesn't try charges, they simply hear appeals and what is the issue here. . . ."

and at p. 405 objected successfully to Reigel cross-examining witnesses. In *The Peoples Bank & Savings Co.* v. *Katz et al.*, 146 O. S. 297, 300 (1946), the very course pursued by Harrison and the Council, under his domination, was ground of reversal for refusal to permit cross-examination. We repeat, there is no Ohio decision that a person, denied guaranteed constitutional safeguards, must follow to the end other inferior procedure to which he is wrongfully relegated before he may maintain a suit.

The rule of required exhaustion before suit of inter-association remedies is based on contract. As in all contracts, when A makes it impossible for B to do what would otherwise be required of him under the contract, B is excused from doing it. Broom's Legal Maxims, Tenth Edition, p. 165. How could Reigel exhaust inter-organization remedies before bringing suit when he was not permitted to have them? The Ohio cases in the Court's opinion are, then, we submit, inapplicable to the facts here, as shown in the petition for rehearing (R. 175, et seq.), to which we respectfully refer. Hence, the decision below was "probably untenable" and, therefore, probably in conflict with

state law as yet unannounced by the highest court of the state. *Ruhlin* v. *New York Life Ins. Co.*, 304 U. S. 202, 206.

As to the Fifth reason relied on, the decision is in conflict with such applicable decisions of this Court as *Tumey* v. *Ohio, supra; Hill* v. *Texas,* 316 U. S. 400, 406 (in judicial consideration whether constitutional rights such as due process have been denied, the individual's guilt or innocence is not a subject of inquiry; but the lengthy, one-sided recital of "factual background" (R. 156 bot.), in the opinion below, indicates a different view, since it would not have been included if thought immaterial); *Gonzalez* v. *Archbishop,* 280 U. S. 1, 16, 17 (in which the Court said decisions of church tribunals would not be accepted where there was "arbitrariness." To deprive a person of constitutional rights is certainly "arbitrariness").

The Court erroneously (R. 164) thought decisions of this Court, such as *Myers* v. *Bethlehem Corp.,* 303 U. S. 41, 50, analogous. As before shown, however, the rule of required exhaustion of inter-association remedies is based on contract; not, like the *Myers* and other cases, compelled by Congressional enactment.

As to the Sixth ground relied on, the present decision is in conflict, on the same matter, with *Green* v. *Obergfell,* 121 F. (2d) 46, 55, decided by the Court of Appeals for the District of Columbia. That decision holds there is to be no judicial interference with intra-association affairs or determinations

> "in the absence of special circumstances showing injustice or illegal action,"

adding:

> "Among other reasons which are said to warrant judicial interference are violation of contract obligations,[28] and invasion of property rights." [29]

with citations in notes 28 and 29 to sustain this statement. Both reasons exist in Reigel's case.

The present decision accepts the findings of the District Court as supported by substantial evidence and not clearly erroneous (R. 156 bot.). However, the findings do not comport with the sole basis of the Court's decision on which the case was dismissed, namely, Reigel's appeal as a member to the Convention during the pendency of the litigation (R. 104). The supposed adequacy of Reigel's remedies is based only on the constitution itself and is clearly disproved by it. Where findings are based on written instruments, the appellate court is as able as the trial court to draw the proper deductions therefrom. Other courts of appeals have not accepted the trial court's findings in such cases. *Bowles, Admr. O.P.A.* v. *Beatrice Creamery Co.*, 146 F. (2d) 774, 780, 10 Cir.; *United States* v. *Latter-Day Saints et al.*, 101 F. (2d) 156, 10 Cir.; *Societe Suisse Pour Valeurs De Metaux* v. *Cummings, Atty. Gen.*, 99 F. (2d) 387, App. Dist. of Col.; *Erskine* v. *United States*, 84 F. (2d) 880, 9 Cir.

The decision, in sustaining a dismissal rather than ordering a stay, conflicts with decisions of this Court, such as *Order of Railway Conductors of America* v. *Pitney*, 326 U. S. 561.

The decision, in sustaining a general judgment of dismissal rather than a dismissal without prejudice as premature, is in conflict with *Radick et al.* v. *Underwriters at Lloyd's, London*, 137 F. (2d) 21, 7 Cir. Such a dismissal is not justifiable, in any event, and may, as shown in the petition for rehearing (R. 165-170), have serious consequences to Reigel in further attempts to obtain court relief.

The decision is in conflict, in the same matter, with general law and the opinions of competent legal authorities such as *Burn* v. *National Amal. Labor Union, etc.* (1920),

2 Chancery 364; *Oakes, Organized Labor and Industrial Conflicts,* 1927, p. 36, Section 28; 4 *Am. Jur.,* Sec. 19, p. 467, under heading, "Necessity of Exhausting Remedies within Organization"; 7 *C. J. S.,* "Associations," Sec. 34b. It is squarely in conflict with *Gallagher* v. *Monaghan,* 58 N. Y. Supp. (2d) 618, decided while this case was pending in the District Court and exactly in point in checking another unlawful expulsion by this very president, Harrison. The decision is buttressed by decisions of the highest court of New York and found that if the president may exercise the power of expulsion, even from membership, it was essential that the procedure should be "analogous to that observed in ordinary judicial proceedings, so far, at least, as to promote substantial justice" and added (p. 619 bot.):

> "I conclude that the order of expulsion made by the Grand President was void and may be attacked in this action without resort to any remedies within the organization. *People ex rel. Deverell* v. *Musical Mutual Protective Union,* 118 N. Y. 101, 23 N. E. 129; *Rodier* v. *Huddell,* 232 App. Div. 531, 250 N. Y. S. 336. The fact that plaintiff did prosecute an appeal to the Grand Executive Council is immaterial. *Wilcox* v. *Supreme Council, Royal Arcanum,* 210 N. Y. 370, 104 N. E. 624, 52 L. R. A., N.S., 806."

The opinion in the *Wilcox* case, *supra,* says:

> "It is shocking to one's sense of fair play that persons defamed should be selected to try the defamatory charge, and it is sufficient for the purposes of this case to hold that they are disqualified by a direct interest in the subject matter of the controversy."

CONCLUSION

For the above reasons, including the far-reaching effect of the decision in the affairs of unincorporated associations, we urge that the petition be granted.

Respectfully submitted,

MURRAY SEASONGOOD,
Attorney for Petitioner.

PAXTON & SEASONGOOD,
Of Counsel.

FILE COPY

Office - Supreme Court, U. S.
FILED
DEC 31 1946
CHARLES ELMORE CROPLEY
CLERK

No. 730

Supreme Court of the United States

OCTOBER TERM, 1946

L. W. REIGEL,

Petitioner,

v.

GEORGE M. HARRISON, Individually and as Grand President of the Grand Lodge, etc., et al,

Respondents.

REPLY BRIEF FOR PETITIONER

MURRAY SEASONGOOD,
Attorney for Petitioner.

PAXTON & SEASONGOOD
Of Counsel

THE JOHNSON & HARMON CO., LAW PRINTERS
CINCINNATI, OHIO

INDEX

	PAGE
Answer to Respondents' (1), Question Presented	1
Answer to Respondents' (2), Supposed Private Nature of the Suit	7
Answer to Respondents' (3), Convention and Courts Can Give Relief	8
Answer to Respondents' (4), Action Premature	10
Answer to Respondents' V. A	10
Answer to Respondents' V. B	11
Answer to Respondents' V. E	11

CASES CITED

Betts et al. v. Easley, et al., 161 Kans. 459, 169 Pac. (2d) 831	8
Cosentino et al. v. Goldman, 49 N. Y. Supp. (2d) 467	11
Fish v. Ruddell, 51 F. (2d) 319	10
Gallagher v. Monaghan, 58 N. Y. Supp. (2d) 618	11
Green v. Obergfell, 121 F. (2d) 46	10
Reilley v. Hogan, 32 N. Y. Supp. (2d) 864	11
Schouten v. Alpine, 137 N. Y. Supp. 380	11

TEXTS

Chafee, Internal Affairs of Associations, 43 Harvard Law Review 993, 1019	9
Oakes, Organized Labor and Industrial Conflicts, 1927	11
45 U. S. C. A., Sec. 151, Sixth, et seq.	8

No. 730

Supreme Court of the United States

OCTOBER TERM, 1946

L. W. REIGEL,

Petitioner,

v.

GEORGE M. HARRISON, Individually and as Grand President of the Grand Lodge, etc., et al.,

Respondents.

REPLY BRIEF FOR PETITIONER

Respondents' brief under I (pp. 1-2) erroneously:

(1) states the question presented by this record,

(2) asserts the question concerns no one but petitioner,

(3) maintains the convention can give petitioner complete relief or, if it decides against him, the courts will then be open to redress any wrong he can establish, and

(4) avers his action is premature.

As to their (1) (the question presented):

(a) Their brief (p. 2) terms Reigel "a union officer," and refers to his having been suspended by the "chief executive officer. . . ." But, Harrison and Reigel were both elected and served as "Grand Lodge Officers" (Constitu-

tion, Article 10, Sec. 1, p. 22; Article 19, Sec. 1, p. 47; Sec. 8, p. 50; Sec. 12, p. 51; Sec. 13, p. 52). The constitution is the "Constitution of the Grand Lodge" (p. 3), the sovereign body (Preamble p. 2, and Article 2, Sec. 2, p. 4). While there is (*1*) a "Constitution of the Grand Lodge," there are (*2*) Statutes for the Government of Lodges (id. p. 73) and (*3*) Protective laws of the Brotherhood (Article 5, Sec. 1, pp. 5 and 92) and different officers for each of the three. Reigel was not an officer of a local lodge, nor a system Board officer under the protective laws.

In the constitution, there is no power in the Grand Lodge President to suspend a Grand Lodge Vice President from his office, much less to expel him and to forfeit it in the guise of suspension.

Respondents' brief (p. 4 bot.) quotes and italicizes erroneously Article 13, Sec. 11(a) relating to the Grand President's power to suspend a "member." The correct quotation is (p. 28):

> "or conduct unbecoming an officer or member of the Organization." (i. e. of the Brotherhood, Art. 1, Sec. 1, p. 3)

The same mistaken statement appears, though pointed out in our briefs and in the petition for rehearing below (R. 180), on their brief (p. 12) referring to "an officer or member of the organization." An "officer . . . of the Organization" [Sec. 11(a), p. 28] is not a Grand Lodge officer.

(b) Respondents' statement of the supposed question involved omits each of the following matters inherent in it:

That an alleged basis for suspension and forfeiture of Reigel's office was (R. 159) charges and intemperate attacks by Reigel against and abuse of the President. For a Grand President to oust a Vice Grand President for supposed unjust attacks and charges by the latter against him and to offer a hearing before himself thereafter is not

"due process." The Grand President purported to suspend Reigel under Article 13, Sec. 11(a), p. 28. But, power to discipline a "Grand Lodge officer" is specifically lodged in the Board of Advocates (Art. 19, Sec. 7, p. 50, id. Sec. 12, p. 52), and only that Board under Sec. 13, p. 52, may expel a Grand Lodge officer from "membership in the Brotherhood." Power to punish by "reprimand, suspension or expulsion from the Brotherhood" for filing unjust charges against a Grand Lodge officer is expressly reposed in that Board (Art. 19, Sec. 12, p. 52).

Reigel, in filing charges against Harrison and Ziegler, was within his constitutional rights, and subject only to punishment for filing false or frivolous charges (Const., id. p. 51) by a Board of Advocates. But Harrison suspended and forfeited Reigel's office for filing these charges and the respondents and trustees concurred in Harrison's illegal action. The charges were filed by Reigel July 7, 1945 (Defendants' Exhibit E-1, minutes Board of Trustees, p. 55), before July 16 when the trustees, at Harrison's instigation, started a supposed investigation of Reigel's accounts. [For examples of their perfidy (though irrelevant) see Defendants' Exhibit E, pp. 71, 73, 74]. Part of Reigel's charges against Harrison and Ziegler was that they had protected one Keenan, who had misappropriated funds (id. 56b). Reigel's charges against Harrison (id. 59) included: 1(a), failing to be impartial; 1(d), discrimination against Reigel; 2(a), curtailing the activities of Reigel; 3(a), denying freedom of speech; 3(b), coercing and threatening to frame Reigel. (See letters of February 3, 1945, and following.)

Harrison and Ziegler refused to act on these charges as required by Article 19 (id. p. 53, letter July 18, 1945). The Trustees then refused to act, although required by the constitution to do so, on these charges or to set up a Board of Advocates (id. 61). On July 27, Reigel wrote the Trustees demanding they take steps to form such a Board to hear

the charges (id. 68), and he made a similar demand on August 2, 1945 (id. 109).

On August 15, the Trustees refused to set up a Board (Defendants' Exhibit E-3, 116, and fourth page from end, unnumbered) and made their report to Harrison (Defendants' Exhibit E-3, p. 116).

Harrison's suspension letter to Reigel of August 15, 1945 (Plaintiff's Exhibit 11), includes:

> "4. . . . making intemperate attacks upon and untrue accusations against the Grand President . . . before the various General Chairmen in meeting in Atlanta, Georgia, on May 14, 1945.
>
> "5. . . . abuse and threats of personal violence to intimidate the Grand President and Grand Secretary-Treasurer, and by abuse of the members of the Grand Lodge Board of Trustees to prevent or subvert . . . investigations and exposures of your misconduct. . . ."

For additional record references showing the above, see Amended and Supplemental Complaint [R. 95, par. 12(d), 38, Plaintiff's Exhibit 7, 31-2, 64-5, 101, 159, 172(f)].

The Council, on Reigel's separate appeal to them from the above illegal refusal to set up a Board and to file as required by Art. 19, Sec. 11 (p. 51), with that Board the charges made by Reigel against the President, Secretary-Treasurer and Trustees, at the same session in which they overruled Reigel's appeal from suspension, overruled his separate appeal on failure to set up a Board and to file his charges with it.

Neither the opinion of the court below nor the brief in opposition here contains a word on this crucial aspect of the case.

(c) Respondents say Reigel appealed to the convention "as provided in the union constitution. . . ." (Br. p. 2.) Omitted is the fact that he was denied right to appeal as

a Grand Lodge officer "as provided in the union constitution" from a decision of the Board of Advocates, because of the refusal by Harrison, et al., to set up such a Board.

Omitted, also, is a statement of the circumstances under which Reigel took his appeal as a member, i. e., only after his application for a preliminary injunction was not heard; without prejudice to his rights in the litigation, etc., and asserting time necessities for taking appeal then and lack of due process in the convention procedure (R. 96).

Against undisputed facts showing the total irrelevancy of Reigel's appeal as a *member* to the convention and the complete inadequacy of any substantial remedy afforded thereby, nothing is adduced by our opponents but the finding of the District Court, affirmed by the opinion of the Court of Appeals. When the latter court said (R. 156):

> "All the findings of the district court are supported by substantial evidence, and certainly cannot be said to be clearly erroneous. Wherefore, the findings are accepted here."

it was relying only on the constitution, if the report of the trustees, which has no bearing on the question involved, and was rightly objected to as immaterial and irrelevant (R. 101), is omitted. The defendants won on motion to dismiss after plaintiff's case was closed. They offered no evidence at all except the slight evidence offered by them

> "in support of the defendants' previous motion to dismiss the complaint. . . ." (R. 99, 101.)

The proceedings in connection with the trial court's findings (R. 122-134) show our objections to them, such as, claim of irrelevancy of the trustee proceedings (R. 122), asserted denial of due process "for the person who is himself under attack to select the Board which will try the case.

. . ." (R. 122 bot. 123), possibility of the convention postponing report of the Committee on Appeals, inability to run for the office of Vice President again and likely contention of lack of eligibility (R. 123); the omission, if trustee proceedings were to be included, of the perfidious nature of these proceedings (R. 124 bot. 5), objection that it was a committee appointed by Harrison and not the convention which would hear the appeal (R. 130), objection that relief, if any was given, would come too late (R. 133). While at the hearing on the findings, in answer to these objections, the following occurred (R. 133):

> "Judge Marx: It is all in the constitution and whatever argument can be made from the constitution, can be made.
>
> ". . . .
>
> "The Court: As I see it, you will have the right, in the Court of Appeals, to bring up all those matters by argument.
>
> "Mr. Seasongood: I think so; I think, also, because so much depends upon the constitution that the ordinary rule that the findings of the Court are almost (always accepted *sic*) acceptable, wouldn't prevail; it is an interpretation of the constitution.
>
> "The Court: You can bring all those matters up in argument."

the contrary is now argued in respondents' brief (p. 3 and note 1).

(d) It is said the appeal will "shortly be heard." From the date Reigel was ousted, August 15, 1945, and from the date his appeals to the Council were overruled in October, 1945, to the end of May, 1947, is more than a year and a half. To him, ousted from elective office for that period, the time before which his appeal could be heard is not

"short." Neither is the five months even now remaining before the Convention assembles.

It is stated Reigel resorted to the courts "for injunctive reinstatement . . . and before exhausting his remedies within the organization, . . ." Twice Reigel moved for a preliminary injunction (R. 6, 7, 61, 62), with affidavits in support (R. 7, 62), and once for a judgment by default (R. 9). He never succeeded in getting a hearing on any of these applications, which were to prevent interference with the enjoyment of his office pending the litigation. In both complaint and amended and supplemental complaint (R. 6, 98) is prayer for final general relief. The court could, therefore, have enjoined interference with Reigel's office either permanently or until a Board of Advocates had been set up and final decision had.

We deny that Reigel had not exhausted his remedies within the organization as a Grand Lodge officer before filing suit; for, previously he had unsuccessfully demanded of respondents and of the Council, by appeal, his rights as an officer, i. e., hearing on his charges and on charges against him, a Board, and any forfeiture of his office only by that Board.

In answer to their (2), (supposed private nature of the suit) we repeat the question here concerns not only petitioner, but all the various officers of the three different classes and also the members of the Brotherhood, and all unions, clubs, fraternal and religious unincorporated associations. First, is to be noted that the right to serve during term in elective office is at issue, not mere right to recover a sum of money as benefits, where delay could be compensated. It is of vital concern to unions and to everyone interested in them and other unincorporated associations whether controlling officers may disregard constitutions or governing articles without possibility of effective court relief against despotic action.

Second, the union involved is not a private organization. It is given an official status as an agency of the United States under the Railway Labor Act (45 U. S. C. A. Sec. 151, Sixth, et seq.), having been designated as the collective bargaining agent and for the handling of grievances for employees in connection with the National Adjustment Board [id. Sec. 153(a)]. (Exh. 1, Protective laws, 94-100. See, also, par. 17, Am. Supp. Cplt., R. 97-98 and Reigel's redirect, R. 51-52).

In *Betts et al.* v. *Easley, et al.*, 161 Kans. 459; 169 Pac. (2d) 831, rehearing denied June 8, 1946, after this cause was argued and submitted in the court below (R. 151), the fourth paragraph of the reporter's syllabus is that constitutional guarantees of due process are to be liberally construed to effectuate their purposes and are a restraint on all administrative and ministerial officials who act under governmental authority. The fourth paragraph of the court's syllabus (the same as paragraph 6 of the reporter's syllabus) is:

> "Labor union performing functions as bargaining agent under the Railway Labor Act is not to be regarded as a wholly private association of individuals, free from all constitutional or statutory restraints to which public agencies are subjected."

Our statement, therefore, in the first of the reasons relied on for allowance of the writ (p. 10) is an understatement; and assertion would have been appropriate that the respondents have official federal status and that Reigel has been deprived of due process by persons acting under federal authority. At least, opponent's contention (p. 12) that "The question is a private rather than a public one" cannot be sustained.

Respondents' (3) above (convention and courts can give relief), overlooks incontrovertible facts which prove the

contrary; such as, that no relief which will permit Reigel to serve the balance of his term can be given when or after the Convention acts. Neither will what intra-organization remedies remain to him as a member be due process, because of delay, control of the convention by the President through his appointment of the hearing Board and numerous officers and other committees at the convention (Const. Art. 7, Sec. 5, p. 16) and prevention of Reigel standing for another term under claim of lack of eligibility [Art. 9, Sec. 4(a), p. 12; Art. 10, Sec. 3, p. 22]. Neither can the courts save the balance of his elective term after it has expired; nor, as a practical matter, make it possible for him to be elected for a fourth term. Respondents assertions are answered in Chafee, "Internal Affairs of Associations," 43 Harvard Law Review 993, 1019. The learned author says:

> "An appeal within the association would not be required if it would be an inadequate remedy for the member. Thus if the appellate body meets very infrequently, the delay amounts to a denial of justice. And when the association is acting wholly outside its powers, its appellate body is as incompetent to pass on the case as the tribunal of first instance, and the courts may as well take charge at once. The same result would follow if an adverse decision of the appellate body is a foregone conclusion."

At p. 1014, three tests are given to determine if expulsion was wrongful: (1) the rules and proceedings must not be contrary to natural justice; (2) the expulsion must have been in accordance with the rules; (3) the proceedings must have been free from malice (bona fide), and at p. 1015, the author observes that under his (1) the principle would probably be implied no one shall be a judge in his own case. According to all of these tests, expulsion here was illegal and wrongful.

As to (4) (action premature), we have already shown that the action was essentially to protect the term of office until complete title to it could be established. Nothing but an injunction temporary and final could accomplish that.

Not only, then, is the action not premature, but if it were, the judgment should have been a stay (our brief p. 15) or at worst only a dismissal without prejudice (id.). Answering respondents' assertions that

> "Should the convention uphold the subordinate tribunals, the courts will be open to redress whatever wrong or injury petitioner may be able to establish." (Br. pp. 2, 12),

we state no court can then redress the wrong and injury petitioner has sustained; and should it even attempt to do so, assertion of bar by general judgment of dismissal is sure to be vigorously urged.

Under V. A in respondents' brief, p. 9, it is contended

> "petitioner fails to cite any decision of any circuit court pertaining to or even referring to the issue on which this case was decided, the necessity of exhausting intra-association remedies before resorting to the courts."

But, this overlooks *Green* v. *Obergfell*, 121 F. (2d) 46, 55, decided by the Court of Appeals of the District of Columbia, cited in our brief, p. 14. This case cites with approval, as shown in the petition for rehearing (R. 180-181), *Fish* v. *Ruddell*, 51 F. (2d) 319, decided by the same court, and holds that where there are special circumstances showing injustice or illegal action, violation of contract obligations and invasion of property rights, the courts will intervene. This is in direct conflict on the same matter with the opinion in this case (R. 162),

> "Whether those who made the charges against him chose the appropriate course, we need not decide."

As to V. B (Br., p. 9), the Ohio cases there referred to are shown completely inapplicable in our brief (p. 11) and under *First* of the petition for rehearing below (R. 175, 177).

Nothing is cited in opposition to our Sixth (Br. p. 11) that the decision is in conflict with general law on the same matter and decisions and authorities cited (id. pp. 15-16). *Gallagher* v. *Monaghan,* 58 N. Y. Supp. (2d) 618, involving this very president, Harrison, is ignored, as are the decisions cited in that case;-to which may be added Section 63, p. 7 of *Oakes, "Organized Labor. . . ." Cosentino et al.* v. *Goldman,* 49 N. Y. Supp. (2d) 467, *Schouten* v. *Alpine,* 137 N. Y. Supp. 380, *Reilley* v. *Hogan,* 32 N. Y. Supp. (2d) 864, affirmed 36 id. 423.

As to respondents' V. E (p. 11) and the argument *ad hominem* that Reigel is guilty, we shall not enter on this divagation, further than to say, though unnecessarily, Reigel alleged in his complaint (R. 5 bot.) and amended and supplemental complaint (par. 16, R. 97) that the allegations made the basis for his dismissal by Harrison

> "are false, constitute a reflection on his character and were made because of ill will and antagonism to this plaintiff on the part of said Harrison."

What Reigel seeks is "due process" and the right to disprove these allegations before an independent and impartial tribunal.

Respectfull submitted,

MURRAY SEASONGOOD,
Attorney for Petitioner.

PAXTON & SEASONGOOD
Of Counsel

INDEX

	PAGE
I. Question Presented	1
II. Counter Statement of Facts	2
III. Decision of the District Court	7
IV. Affirmance by the Court of Appeals	8
V. Argument	9
VI. Conclusion	13

Cases Cited

Baltimore & Ohio Railroad Company v. Stankard, 56 O. S. 224, 46 N. E. 577 (1897)	10
Boblitt v. Cleveland C. C. and St. L. Ry. Company, 29 O. O. 65, 73 O. App. 339, 56 N. E. (2d) 348 (1943)	10
Fish v. Huddell, 51 F. (2d) 319 (1931)	9
Gorham Mfg. Co. v. Tax Commission, 266 U. S. 265 (1924)	11
Hahn v. Elliott, 28 O. L. Abs. 353 (1939)	10
International Union v. Owens, 119 O. S. 94, 162 N. E. 386 (1928)	9
Mace v. Carpenters and Joiners, 31 O. N. P. (N.S.) 17 (C. P. 1933)	10
Myers v. Jenkins, Administrator, 63 O. S. 101, 57 N. E. 1089 (1900)	10
Myers v. Bethlehem Corp., 303 U. S. 41 (1938)	11
Macauley v. Waterman Steamship Co., 321 U. S. 540 (1946)	11
Utley v. St. Petersburg, 292 U. S. 106 (1934)	11
Ward v. Campbell, 14 O. O. 493, 1 O. Supp. 192 (C. P. 1939)	10

No. ———

Supreme Court of the United States

OCTOBER TERM, 1946

L. W. REIGEL,

Petitioner,

v.

GEORGE M. HARRISON, Individually and as Grand President of the Grand Lodge of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, an Unincorporated Organization, as Chairman of the Grand Executive Council of Said Grand Lodge, and as Representative of Said Grand Executive Council, Grand Lodge and Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, an Unincorporated Organization,

PHIL E. ZIEGLER, Individually and as Grand Secretary-Treasurer of the Grand Lodge, etc.,

ROBERT MORGAN, Individually and as Vice Grand President of the Grand Lodge, etc.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. QUESTION PRESENTED

The respondents deny that the "summary statement" in the petition correctly sets forth the facts which were found by the district court after a hearing on the evidence presented by petitioner. Respondents further submit that the facts, when properly and correctly stated, do not present the questions which petitioner alleges to exist.

The only question involved in the present case is—**whether a union officer, found guilty of fraud and dishonesty in his expense accounts and suspended by the chief executive officer, and whose suspension has been affirmed by the Grand Executive Council of his union, and who has appealed to the supreme tribunal of the union, as provided in the union constitution, which appeal is pending and will shortly be heard, may resort to the courts for injunctive reinstatement before that appeal is determined and before exhausting his remedies within the organization, as required both by the union constitution and by the general law.**

The question concerns no one but the petitioner. The courts below decided that the petitioner's resort to the courts was premature and that he must first exhaust the remedies provided by his own organization. He has appealed from the subordinate tribunals of the union to its supreme tribunal, the international convention, seeking to reverse his conviction and suspension. That appeal will be heard this coming May. Should the convention decide in favor of the petitioner, it is obvious that his alleged complaint will be entirely moot—since the union constitution provides that in such event he shall be restored to all of his rights. Should the convention uphold the subordinate tribunals, the courts will then be open to redress whatever wrong or injury petitioner may be able to establish.

At this posture, therefore, the lower courts held that his resort to a court of equity was clearly premature. He cannot prosecute two appeals, one within the union and another in the court.

II. COUNTER STATEMENT OF FACTS

In view of our contention that the statement of facts contained in the petition is shot through with error, we believe it necessary to make the following chronological resumé.

Every statement contained in this summary is taken from the findings of fact made by the district court (R. 107-113). Of these findings, the Court of Appeals for the Sixth Circuit said in its opinion (R. 156):

> "All the findings of the district court are supported by substantial evidence, and certainly cannot be said to be clearly erroneous. Wherefore, the findings are accepted here."[1]

The Brotherhood is an unincorporated international labor union organized under a written constitution (R. 42, 108, Ex. D). Until suspended on August 15, 1945, the petitioner Reigel was a member and international officer, one of the Vice Grand Presidents (R. 34, 107). Upon induction into office he had taken a ritual oath to obey the constitution and laws of the Brotherhood, stating, in part:

> "I further promise and declare that I will not under any circumstances resort to or bring suit in any court or courts either Federal, State or Provincial **until I have exhausted all my rights and used all means at my command within and under the laws of the Brotherhood**" (R. 41, 42, 108, 109, Ex. A).

Similarly Article 5, Sec. 2 of the constitution provides:

> "No officer, member or subordinate unit of the Brotherhood may resort to any Court of Law or Equity or other civil authority either as parties plaintiff or for the purpose of securing an opinion or decision in connection with any alleged grievance or wrong concerning any case in controversy arising within the organization or under its law, **until such officer, member or subordinate unit first shall have exhausted all remedies by appeal or otherwise provided herein for the settlement and disposition of such alleged rights, grievances or wrongs**" (R. 109, Ex. D).

[1] In his brief, p. 5, Reigel claims the findings were not justified by the evidence, but the Court of Appeals has disposed of this argument. We also include direct record references which demonstrate the ample basis for the findings.

The Board of Trustees is elected by the quadrennial convention, and is charged by the constitution with the duty of auditing the accounts of the Brotherhood (R. 109, Ex. D, Art. 17, Sec. 1). On July 16, 1945 the board commenced an examination of the expense accounts submitted by Reigel as Vice Grand President (R. 110, Ex. E). On July 30, at the board's request, Reigel appeared before the trustees and was questioned about his accounts (R. 110, Ex. E-2).

On August 15, 1945 the board formally notified the Respondent Harrison, as Grand President, **that Reigel had submitted deceptive and fraudulent expense accounts and received money for expenses not incurred in discharge of his duties and business of the Brotherhood.** (R. 110, Ex. E-3).[2]

After receipt of the Board's communication, Harrison, in his official capacity, notified Reigel in writing that he was suspended as a member of the Brotherhood for violation of its constitution and laws and for conduct unbecoming an officer or member of the organization. The notice specified the articles and sections violated and contained a complete and specific statement of the alleged misconduct, concluding with the statement that Reigel would be granted a hearing on request (R. 110, Ex. F-1).

The Grand President acted under Article 13, Sec. 11(a) of the constitution (R. 111), which provides:

> "He (the Grand President) shall have power to suspend **any member** for violation of the Constitution and laws of the Brotherhood or conduct unbecoming **an officer or member** of the organization, but the cause of suspension shall be submitted in writing to the suspended member and must expressly state each and all

[2] Petitioner's brief at p. 2 makes the baseless contention that in Feb. and March substantially all of his duties had been taken from him. Actually he was then specifically assigned a great many most important duties (Ex. F, pp. 352-355).

of the Articles and Sections of the law violated, and it shall contain a complete and specific statement of the alleged misconduct. Such written statement of the Grand President will constitute the sole basis for suspension."

"**A suspended member shall have the right of appeal to the Grand Executive Council** as hereinafter provided, and if the Grand Executive Council sustains the suspension it shall become permanent **unless reversed by the next Grand Lodge Convention.** If the suspension be not sustained, the member affected shall be restored to good standing in the Brotherhood with all rights and privileges due him as if he had never been suspended. The member or members shall be reimbursed out of the funds of the Grand Lodge for all legitimate expense incurred by him or them in handling the matter of the suspension" (Ex. D).[3]

Reigel did not accept the hearing offered him, but appealed from the action of the Grand President to the Grand Executive Council (R. 111, Ex. F-2). The council heard the appeal on October 11 and 12, 1945. Reigel appeared in person and was represented by counsel. Neither Harrison nor the respondent Ziegler, Grand Secretary-Treasurer, participated in the deliberation or decision of the council (R. 111, Ex. F). On October 13, 1945 the council, exclusive of Harrison and Ziegler, and consisting of the six remaining Vice Grand Presidents, **voted unanimously to sustain the action of the Grand President and duly notified Reigel** (R. 111, Ex. H).

Section 15, Article 16 of the constitution provides:

[3] The petitioner repeatedly complains that he was deprived of his office without "due process" in violation of Art. 10, Section 1 of the union constitution. The process there referred to indisputably is that provided by the union constitution. The district court expressly found that the president suspended Reigel under Article 13 and complied with all of its requirements. He has also been given every right granted by the constitution during the course of his appeals.

> "Any member of the Brotherhood feeling aggrieved by the decision of the Council **may appeal to the Grand Lodge Convention** within sixty days after such decision, . . ." (Ex. D).

On October 31, 1945, **without having exercised his right to appeal to the convention**, Reigel appealed to the courts by commencing this action in the district court against the Brotherhood and its officers for an injunction restoring him to his membership and office (R. 1, 112). Thereafter, on December 4, 1945, and within the time granted by the constitution, **Reigel duly filed a written appeal to the convention** from the decision of the council (R. 96, 112, Ex. G). The appeal was duly received and acknowledged, is now pending, and will be heard in due course by the convention at the next meeting of the Grand Lodge to be held in Cincinnati, Ohio in May, 1947 (R. 112).

After a full and complete hearing of the petitioner's complaints the district court found expressly (R. 113):

> "The Grand Lodge is so constituted **as to insure the plaintiff, Reigel, that his appeal will be heard by a representative body which has the power to give plaintiff full and complete relief if his suspension be not sustained.** The delegates to said Convention have not been elected and the provision for their election and qualification guarantees that they will be thoroughly representative of the entire membership of the Brotherhood" (Article 6 and succeeding sections).[4]
>
> "(10) Article 13 of the Brotherhood Constitution empowers the Grand President to exercise general supervision over all the affairs of the Brotherhood (Section 1); provides that he shall enforce strict observance of the Constitution laws, rules and regulations of the Brotherhood (Section 2); provides that he shall call to

[4] Petitioner's brief, p. 9, speaks of a limited and abortive appeal to a Convention not to be held for years. That statement is directly controverted by the court's finding.

account any member of the Brotherhood violating the same (Section 3); and, further provides that he shall have sole power and authority to interpret the Constitution and laws **subject to appeal to the Grand Executive Council** (Section 4)."[5]

III. DECISION OF THE DISTRICT COURT

The District Court for the Southern District of Ohio, Western Division, granted a motion for dismissal (R. 106). It rendered no formal opinion but did file conclusions of law (R. 114-115) which the Court of Appeals in its opinion has aptly summarized (R. 162) as being, in substance:

(1) That not having exhausted his available remedies within the Brotherhood to redress the grievances of which he complained, the plaintiff Reigel is not entitled to maintain his court action;

(2) That until the Grand Lodge Convention has had an opportunity to hear and determine the appeal of the plaintiff, his complaint is premature and must be dismissed;

(3) That inasmuch as the Grand Lodge Convention has power to grant complete redress and relief, the plaintiff by filing an appeal to that constituted authority, has elected to pursue and exhaust his remedies in the Brotherhood and is thereby precluded from proceeding in the United States District Court to try the identical controversy which he had appealed to the next Grand Lodge Convention of his union;

(4) And that, although the defendants had requested the court to make further findings of fact and conclusions of law upon other grounds urged in their motions and answers and although the other grounds urged in support of the

[5] The petitioner repeatedly claims that he was arbitrarily suspended by an autocratic president who bore him ill will. Actually, however, the Union Constitution prescribes many safeguards. The president, as chief executive, has considerable authority, but his acts are subject to review by the Council, in whose deliberations he may not participate (Art. 16, Sec. 12) and again by the democratically chosen and representative convention.

motion for dismissal have some merit, the court was not passing upon them for the reason that the findings of fact and conclusions of law made are deemed controlling.

IV. AFFIRMANCE BY THE COURT OF APPEALS

The Court of Appeals for the Sixth Circuit, Judges Hicks, Simons and Martin, affirmed the dismissal of the case (R. 151). The core of the opinion, reported in 157 F. (2d) 140, is found in the following excerpt (R. 162, 164):

> "Appellant insists that he has been deprived of his elective office in the Brotherhood in a manner not in consonance with due process of law. We are not impressed with the argument. His contention seems to rest upon alleged erroneous procedure by constituted officials within the Brotherhood. Whether those who made the charges against him chose the appropriate course, we need not decide. Appellant was at least given the opportunity to be heard and to defend himself against the charges of dishonesty levelled against him. As found by the district court, Reigel has not exhausted his remedies within the Brotherhood; and this being true, he is not entitled to maintain this court action. The decision of the district court was in conformity with the controlling law, that of Ohio, which is consistent with the general law. . . .
>
> "The applicable principle in the instant controversy is analogous to a long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedies have been exhausted. . . .
>
> "In view of the ground upon which our decision is rested, discussion of the other defensive propositions presented by appellees is unnecessary."

V. ARGUMENT

A. The Decision Is Not in Conflict with That of Any Other Circuit Court.

The petitioner fails to cite any decision of any circuit court pertaining to or even referring to the issue on which this case was decided, the necessity of exhausting intra-association remedies before resorting to the courts. On the other hand, the decision of the Circuit Court for the District of Columbia in *Fish* v. *Huddell,* 51 F. (2d) 319 (1931), cited by Judge Martin in the opinion, is squarely in line with the decision in this case.

B. The Decision Is Not in Conflict with Applicable Local Decisions as to the Local Law.

Again the petitioner fails to cite a single Ohio case with which he claims the instant decision conflicts. Instead he says (page 11), "no Ohio decided case is like the present one. . . ." And at page 13: The decision below was "probably in conflict with state law as yet unannounced by the highest court of the state."

Both the district court and the Court of Appeals considered *International Union* v. *Owens,* 119 O. S. 94, 162 N. E. 386 (1928), directly in point and decisive of the issue. There the Supreme Court of Ohio said:

> "It is a well-settled principle of law, recognized by the courts of this state and by the courts of other states, that the members of a fraternal association by adopting a constitution and by-laws and providing reasonable rules and regulations for settling their own disputes and by establishing their own tribunals of original, intermediate, and appellate jurisdiction, become bound thereby, provided such constitution, by-laws, rules and regulations do not contravene the laws of the State. It is also well settled that the members of such an association must conform to the reason-

able rules and regulations thereof and must exhaust all remedies within the association and before such regularly constituted tribunals."

The Court of Appeals also called attention to the fourth syllabus of *Myers* v. *Jenkins, Administrator,* 63 O. S. 101, 57 N. E. 1089 (1900).

The petitioner relies upon the holding in *Baltimore & Ohio Railroad Company* v. *Stankard,* 56 O. S. 224, 46 N. E. 577 (1897) that a regulation prohibiting a resort to the courts is invalid. That decision clearly indicates, however, that the regulation will be upheld, where, as in the Brotherhood Constitution, it only prohibits resort to the courts **before exhausting intra-association remedies.** As the Court of Appeals pointed out, that distinction is made in *Myers* v. *Jenkins, supra.*

The Court of Appeals also cited some of the decisions of the inferior courts of Ohio which are uniformly to the same effect. These cases are:

Hahn v. *Elliott,* 28 O. L. Abs. 353 (1939).
Ward v. *Campbell,* 14 O. O. 493, 1 O. Supp. 192 (C. P. 1939).
Boblitt v. *Cleveland C. C. and St. L. Ry. Company,* 29 O. O. 65, 73 O. App. 339, 56 N. E. (2d) 348 (1943).
Mace v. *Carpenters and Joiners,* 31 O. N. P. (N.S.) 17 (C. P. 1933).

C. The Decision Is Not upon Any Question of Federal Law.

The petitioner has not pointed to any question of federal law which he claims is involved. The only issue decided was the effect to be given to a provision in the constitution of an unincorporated association requiring a member or officer suspended for dishonesty to exhaust the remedies provided by its constitution for redress of his grievances **before resorting to the courts.**

D. The Lower Courts Have Not Departed from the Accepted and Usual Course of Judicial Proceedings.

As above noted, every reported Ohio decision is in accord with the ruling of the lower courts that a suspended member of a voluntary association must comply with a provision of its constitution by exhausting the appeals from such suspension thereby provided before resorting to the courts. The rule is analogous to that requiring exhaustion of administrative remedies as established by this court in such cases as *Gorham Mfg. Co.* v. *Tax Commission*, 266 U. S. 265 (1924); *Utley* v. *St. Petersburg*, 292 U. S. 106 (1934); *Myers* v. *Bethlehem Corp.*, 303 U. S. 41 (1938); *Macauley* v. *Waterman Steamship Co.*, 321 U. S. 540 (1946).

E. The Case Is Not One of Public Interest.

The result of the case affects only one person, Reigel. Even as to him, there has been as yet no final determination of any claim. He has pending his appeal to the Grand Lodge Convention which will meet in a few months and which the district court found to be a fairly selected and representative body with ample power to amend any wrong which it might find had been done to Reigel.

To date Reigel has never attempted to disprove the mass of evidence establishing that he submitted hundreds of false and fraudulent expense accounts and wrongfully received payment for expenses not incurred in connection with his employment. He had an opportunity to deny his guilt before the Board of Trustees. President Harrison offered him a hearing which he rejected. He appeared before the Grand Executive Council and was confronted with the damning evidence. He was on the witness stand in the district court. He has filed not less than seven briefs in the district court, the Court of Appeals and now in this

court, but he has not yet even tried to overcome the proof of his dishonesty and fraud.[6]

His only complaint is that he was suspended under the wrong procedure. He argues that when the Constitution authorizes the president to suspend any member for violation of the Constitution and laws or for conduct unbecoming an officer or member of the organization, the power extends only to members or perhaps to officers of local lodges but not to such an officer as he, an international vice president. It will be noted that Reigel cannot claim that the question affects the rights of more than a handful of people, not the members, but only the Grand Lodge officers of this particular union organized under this particular constitution. It is clear that the question is a private rather than a public one.

His theory has been rejected by the president who is empowered by the constitution to interpret its provisions, subject to appeal to the Grand Executive Council. The council has affirmed. He now has an appeal pending before the Brotherhood's final authority, the convention.

If he should there break his incriminating silence and establish his innocence, or prevail in his contention that despite his guilt the improper procedure for suspension was followed, the convention has power to give him complete redress and the question raised in the courts becomes moot. If the convention decides against him, the courts will be open to protect whatever rights he may have. At the present posture, before the convention has had an opportunity to hear his appeal, his action in the courts is obviously premature.

---

[6] Throughout his brief the petitioner tries to make it appear that he was removed by the arbitrary act of one man. The Board of Trustees, however, is directly elected by the convention and in no way subject to the control or supervision of the president. The president did not participate in the decision of the council which was composed of Reigel's six fellow vice-presidents, all of whom were elected by the convention. Again, his pending appeal will be decided by several hundred democratically elected delegates to the convention.

VI. CONCLUSION

We believe the petitioner has failed to establish any of the conditions laid down by this court as warranting the exercise of its judicial discretion in favor of review on a writ of certiorari. The decision is in strict accord with the law of Ohio as uniformly established by its courts and conforms to the rule prevailing throughout the country. The case does not affect the public but only the petitioner. Even his rights have not yet been finally determined adversely to his claims, for he has pending his appeal to the highest tribunal of his union. Under these circumstances we feel that the petition for a writ of certiorari should be denied.

Respectfully submitted,

FRANK E. WOOD,
ROBERT S. MARX,
LEONARD D. SLUTZ,
900 Traction Bldg.,
Cincinnati 2, Ohio,
Attorneys for Respondents.

Of Counsel:
NICHOLS, WOOD, MARX & GINTER